

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW MEXICO

In re: John D. Rolston,

DEBTOR.

CASE NO. 7-04-19035 MA

Kenneth B. Miller,

Plaintiff,

vs.

Adversary No. 07-1037 M

John D. Rolston aka Doc Rolston,
dba Higher Ground Outfitters and Guide Service,

Defendant.

MOTION TO DISMISS ADVERSARY PROCEEDING

John D. Rolston, Debtor herein, files this his Motion to Dismiss Adversary Proceeding, and for cause would show unto the Court the following:

1. On December 13, 2004, debtors filed for relief pursuant to Chapter 7 of the U.S. Bankruptcy Code. This adversary proceeding was filed March 5, 2007.
2. This matter should be dismissed since Kenneth B. Miller ("Plaintiff") failed to file this Complaint under 11 U.S.C. 523 within 60 days after the first date set for the meeting of creditors, as mandated by Bank.R.Pro. Rule 4007.
3. Pursuant to Bank.R.Pro. Rule 7012(b), which incorporates F.R.C.P. Rule 12(e), defendant requests that plaintiff be required to plead with particularity: (1) the so-called "multiple counts of violation of the common law of New Mexico" set forth in paragraph 6 of the

Complaint; (2) what “acts of larceny and fraud” were committed by Defendant, as set forth in paragraph 10 of the Complaint.

4. The claims of Plaintiff are barred by the applicable statute of limitations.
5. The claims of Plaintiff are barred by the equitable doctrine of laches.
6. Debtor requests that this Adversary Proceeding be dismissed.

WHEREFORE, John D. Rolston, Debtor herein, requests that he be granted the relief requested herein and for such other and further relief to which he may show himself justly entitled.

Respectfully submitted,

VELARDE & PIERCE
/s/ filed electronically 4/23/07
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ATTORNEYS FOR DEBTOR

CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2007, a true and correct copy of the above and foregoing pleading was served electronically or via U.S. Mail on each of the parties identified below pursuant to local rule.

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